

Date of issue: Wednesday, 15 March 2023

<b>MEETING</b>	<b>CABINET COMMITTEE - ASSET DISPOSALS</b> (Councillors Swindlehurst (Chair), Ajaib, Anderson, Hulme and Mann)
<b>DATE AND TIME:</b>	THURSDAY, 16TH MARCH, 2023 AT 4.30 PM
<b>VENUE:</b>	COUNCIL CHAMBER - OBSERVATORY HOUSE, 25 WINDSOR ROAD, SL1 2EL
<b>DEMOCRATIC SERVICES OFFICER:</b> (for all enquiries)	NICHOLAS PONTONE 07749 709868

### SUPPLEMENTARY PAPERS

The following Papers have been added to the agenda for the above meeting:-

\* Item 3 was not available for publication with the rest of the agenda.

### PART 1

<u>AGENDA ITEM</u>	<u>REPORT TITLE</u>	<u>PAGE</u>	<u>WARD</u>
3.	GRE5/Nova House	1 - 30	Central
3a.	Exclusion of the Press and Public	-	-
<p>It is recommended that the Press and Public be excluded from the meeting during consideration of the item in Part 2 of the Agenda, as it involves the likely disclosure of exempt information relating to the financial and business affairs of any particular person (including the Authority holding the information) as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (amended)</p>			

### PART II

3b.	GRE5/Nova House - Appendices	31 - 40	Central
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**Slough Borough Council**

<b>Report To:</b>	Cabinet Committee for Asset Disposals
<b>Date:</b>	16 <sup>th</sup> March 2023
<b>Subject:</b>	Nova House/GRE5 update report
<b>Lead Member:</b>	Councillor Rob Anderson Lead Member for Financial Oversight and Council Assets
<b>Chief Officer:</b>	Pat Hayes, Executive Director Property and Housing
<b>Contact Officer:</b>	Fin Garvey, Group Manager – Place Delivery
<b>Ward(s):</b>	Central Ward
<b>Key Decision:</b>	YES
<b>Exempt:</b>	Public with exempt appendices under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council
<b>Decision Subject To Call In:</b>	YES
<b>Appendices:</b>	Appendix 1 – GRE5 Business Plan  Confidential Appendix 1 – Update on Insurance Claim Confidential Appendix 2 – Potential Insurance scenarios Confidential Appendix 3 – Financial Scenarios - Examples Table Confidential Appendix 4 – Outcome scenarios

## **1. Summary and Recommendations**

- 1.1 This report provides an update on the current position of Ground Rent Estates 5 Limited (“GRE5”) and sets out the Business Plan for the company for the five year period to March 2028.

### **Recommendations:**

Cabinet Committee is recommended to:

Recommend to Cabinet:

1. Approval of the Business Plan for GRE5, which is included as Appendix 1 to this report.

2. Approval of an increase in the loan facility by £5m to allow the work programme to continue in advance of any recovery via the legal proceedings, future grant from Homes England or leaseholder recovery.

Agree to regular, at least quarterly, reports being presented to the Committee updating on progress and risks and for a future report recommending approval of an updated shareholder agreement.

**Reason: The refurbishment programme is currently paused, pending the availability of additional funding. As there are limited options for additional funding, a decision to increase the loan facility will enable the works programme at GRE5 to continue without any additional delay and cost.**

## **Commissioner Review**

Commissioners have reviewed the report and are content with the report.

## **2. Report**

### **2.1 Introduction**

Ground Rent Estates 5 Limited ("GRE5") is a company which is wholly owned by Slough Borough Council (the Council). GRE5 owns the freehold of Nova House, a block of 68 apartments in Slough town centre. The building was previously office accommodation and was converted to an apartment block in 2015 with additional floors added to the building. All flats have been sold under leasehold titles. GRE5 does not own the leasehold titles for any of the individual flats.

GRE5's core day-to-day activities include the collection of ground rent, freehold extensions and management of some services provided to residents/owners at Nova House. Its activities are very minor and small scale and includes income and costs of approximately £15k per annum. It has very limited options in terms of raising finance as it has minimal assets and value to provide security for an institutional funder such as a bank.

Following the Grenfell Tower fire, high rise residential buildings were subject to testing to identify whether they had a similar combustible cladding. Nova House failed flammability tests in 2017. Further survey work then revealed additional issues with the compartmentation within the building and further structural defects were identified in 2022 as set out in this report.

In 2018, following discussion with the then Ministry of Housing, Communities and Local Government (MHCLG) and Royal Berkshire Fire and Rescue Service, the Council approved the acquisition of 100% of the share capital of GRE5 for £1 due to concerns about the capacity and ability of the company, and its existing shareholders at that time, to undertake the substantial remediation works required and concerns about the safety of residents. Whilst the exact scope of works was unknown at that stage, costs were anticipated to be c. £10m and it was assumed at that time that the Council would be able to recover some or all of the costs associated with the remediation works to address the defects from a third party (not named at the time of acquisition) following a legal claim.

Following the acquisition of GRE5, interim fire safety measures were put in place, and continue to be in place, in the building to ensure the safety of residents, pending the completion of remediation works. These have included a high-quality heat detector system, the presence of a 24-hour waking watch and immediate evacuation procedures in the event

of fire. All measures continue to be assessed on an ongoing basis in conjunction with the Royal Berkshire Fire and Rescue Service (RBFRS).

A scope of works and a Development Agreement were agreed with Slough Urban Renewal (SUR) in 2020 to remove all Aluminium Composite Material (ACM) Cladding and associated replacement works. Under the terms of the SUR Partnership Agreement, SUR can undertake Community Projects to deliver building or infrastructure works. SUR and its supply chain are required to demonstrate value for money through transparent and open-book pricing with 80% of sub-contract packages market tested, and a fixed and agreed overhead and profit margin and independent VFM cost report.

The original works project experienced delays due to covid restrictions and the requirement to undertake additional tests and surveys due to concerns identified as cladding materials were removed from the building. All ACM was fully removed by the end of January 2022 which improved the safety of the building, although due to other defects, there was still a necessity to retain interim safety measures. A series of investigations took place in FY 2020/21 and again in FY2022/23 which identified a range of further defects and associated technical issues which are set out in this report.

In 2022, structural issues were identified relating to the spine beam, bracing to the building, shims and column connections. This resulted in the halt of the cladding replacement works whilst contractors made assessments and provided remediation options for the structural issues. The design of technical solutions to address these issues has been complex but solutions have now been agreed and costed. Following technical advice, the structural issues are required to be addressed before the cladding and balconies can be replaced on the building. The main phase of works is now expected to be undertaken during 2023 and 2024 with completion of the build project forecast for Q3 FY24/25.

## **2.2 Current position**

### *Robust governance, management and oversight*

In October 2021, two new GRE5 Directors were appointed to oversee this complex project bringing a range of skills and experiences relating to communications, stakeholder management, governance and leading construction projects.

New governance and management arrangements have also been introduced to further strengthen management and reporting arrangements internally and into the Council. This includes weekly GRE5 team meetings, monthly GRE5 board meetings and monthly meetings between Council officers and GRE5 Directors with project, financial and risk reporting. The Council has established a corporate oversight function which includes representatives from across the Council and a SRO has been designated. The Council needs to improve its reporting to elected members, including ensuring that an annual business plan is approved, significant increases in funding, including loan arrangements, are approved at a member level and there is appropriate oversight by members. Reports will be presented to the Cabinet Committee, with matters that are reserved to Cabinet being determined by full Cabinet. In addition where appropriate the risks associated with this company will be reported to Audit and Corporate Governance as part of the corporate risk register. Overview and Scrutiny Committee will be able to consider whether it wishes to scrutinise this company as part of its annual work programming.

The GRE5 Team includes the Directors plus a project manager and finance support. Additional services and expertise is brought in as required. e.g. Communications support,

legal advice and technical advisors. A wider team of contractors are engaged in the project in relation to building works, security and a waking watch service.

The GRE5 Directors are responsible for leading communications with owners and occupiers and in early 2022 developed a new communications plan and, introduced regular leaseholder meetings and a wide range of leaseholder and resident communications. The Directors meet the leaseholders every two months and provided reports and updates at these meetings. The meetings also provide a forum for discussion about the project plus any other issues in relation to the management of the building and the insurance case. The meetings are also attended by Red Rock Management (the managing agent) and Fenchurch Law (GRE5's legal advisors on the insurance case).

### *Project changes, scope and costs*

As a result of the issues set out in the introduction, the scope of works required and the costs of the project have changed significantly since the Council's original estimate of £10m. The original Development Contract to remove and replace the cladding within a 22 month timeframe was originally expected to cost £11m. This is now expected to cost £17m due to the additional defects and in addition, further separate structural works are also required to enable the cladding works to take place, which have now been costed at a further £4m.

Total overall costs are now expected to be in the £28.4m compared to the estimate of £19.6m at the end of March 2022 before the additional defects were identified. Costs to date (up to the end of March 2023) are estimated to be £15.8m which includes the removal of all cladding, new protective temporary membrane, a range of essential fire and safety measures (including waking watch services and fire doors) and legal, financial and project management costs. The cost changes are set out in the following table.

<b>£m</b>	<b>Previous total cost estimate (as at March 22)</b>	<b>Current total cost estimate</b>	<b>Costs to date March 23</b>
1a. Waking watch costs	1.9	2.1	2.0
1b. Legal costs	2.6	2.1	1.9
1c. Project management costs etc.	1.0	1.1	0.7
1d. Other – SBC internal costs	-	0.7	0.1
2. Development Contract – fire and safety works	10.6	17.0	10.0
3. Development Contract – additional structural works	-	4.0	0.4
4. External works - other	0.3	0.8	0.7
5. Internal works	3.3	0.6	-
	<b>19.6</b>	<b>28.4</b>	<b>15.8</b>

### Development Contract – fire and safety

The fire and safety works contract (cost item 2) has increased due to the discovery of additional structural issues with the building, which need to be addressed before the cladding can be replaced. Specific changes include:

- additional costs re the balcony structures. When the balconies were removed, it was discovered that additional work would be required to reinstate them including secondary steel structures;
- the delay to the programme, which has resulted in extra costs due to additional preliminary costs, additional scaffolding costs, the cost of keeping the site safe and secure and inflationary impacts; and
- changes in working practices required due to the structural deficiencies in the building. Based on structural engineer's advice, the building is unable to support the scaffolding and hoists on which the original workplan was based. The new workplan requires additional specialist lifting equipment and has had an impact on work sequencing.

The scope of works and costs of the Development Contract have been independently reviewed by Artelia in their role as Employer's Agent and the Independent Certifier to GRE5 and Cushman & Wakefield on behalf of Homes England as part of the grant funding claim process. Both advisors have confirmed that the scope and costs are in line with expectations and represent a cost effective solution.

### Development Contract – structural works

The scope of works for the structural works been assessed as being the minimum specification to enable the completion of the works programme. The cladding cannot be replaced until the structural issues have been resolved as the structure is not capable of supporting the new cladding. Advice on the specification has been provided by Arup and Morgan Sindall and verified by the independent Consultant Engineer working on the insurance claim.

Based upon the range of independent assessments as set out above, the GRE5 Directors are assured that the revised specification and associated costs represent the optimal cost effective solution.

During the first phase of works, the balconies were required to be removed before the original cladding could be removed. The reinstatement of the balconies will require additional work following structural engineer advice to ensure fire and building safety when attached to the primary steel frame. These costs are now highly likely to be classified as "eligible works"/costs for additional Homes England funding. This is discussed further in the financial section.

The impact of these changes is summarised in the following table.

	£m
<b>Original contract sum (dated 2021)</b>	<b>10.6</b>
Increase due to additional balcony works	2.7
Extension of time costs	1.8
Change in work approach due to structural safety issues	1.3

	£m
Weatherproofing costs due to building being without cladding	0.2
Other cost items (eg additional surveys)	0.4
<b>Revised contract sum (excluding structural works) as at March 2023</b>	<b>17.0</b>

#### Internal works

The internal works (cost item 5) are no longer required due to revisions to the scope of works in the Development Contract (cost item 2).

#### Cost variation summary

	£m
<b>Cost estimate as at March 2022</b>	<b>19.6</b>
Increase in main Development Contract	6.4
Decrease in internal works	(2.7)
New structural works	4.0
Other changes	1.1
<b>Revised cost estimate as at March 2023</b>	<b>28.4</b>

#### *Funding arrangements in place*

The Cabinet approved a loan of £10m in 2019, although it was not in accordance with the Council's Treasury Management Strategy and therefore not in accordance with the budgetary framework. It was re-approved by full Council in July 2021 and the loan facility was formally executed in 2022. A variation to the loan to allow an additional £5m of funding is proposed and has been included in the Business Plan attached as Appendix 1 to this report.

It is anticipated that some, or all, of the loan from the Council maybe repayable by GRE5 out of the proceeds of the legal claim although there are risks associated with the repayment of the loan, which are set out in the confidential appendix. The ability of GRE5 to repay this loan is dependent upon a number of factors including the total overall final costs, any grant clawback, outcome of the legal claim and potential recovery of costs from leaseholders.

In 2021, the GRE5 were successful in being awarded a grant from Homes England for £9.2m towards the cladding removal works. Additional grant funding is also being discussed with Homes England but is not yet approved. Homes England has confirmed in writing that it will not approve any further grant funding until the Council has approved the extension of the loan facility. This will provide Homes England with evidence that the programme can be completed. The Business Plan assumes that additional funding will be available from Homes England for the additional structural works (£4.0m) only although additional grant funding may be more or less than this amount. This funding is required over and above the £5m loan extension and will reduce the risk of the Council having to further increase its loan to fully cover the costs of the works.

Homes England have confirmed in writing that they will work with GRE5 on a new grant claim for the balance of the development works, both in relation to increases to the cladding contract and the new structural works. They have stated that they will not provide a funding offer in advance confirmation of the proposed variation to the Council loan and



that they are concerned about the current delay/pause in the programmed works. Whilst they recognise that this is a highly complex project, they have stressed the need to secure the relevant funding approvals and accelerate the remedial site work. Approval of the variation to the Council's loan is the first step in this.

A contribution to legal costs of £0.2m has been received under the insurance claim. This has been used to fund an element of GRE5's legal costs incurred by GRE5.

Total secured funding of £19.4m is therefore in place via the Council loan (£10.0m), the HE grant (£9.2m) and the contribution received under the insurance claim (£0.2m), compared to projected costs of £28.4m (a funding gap of £9m). The extension of the Council's loan facility (£5.0m) and £4.0m potential additional funding from Homes England will provide sufficient funding to allow the works programme to progress prior to any receipt of funds from the insurance claim or leaseholders, subject to the costs of works not further increasing.

The loan is required to be repaid to the Council from any settlement on the legal claim. Homes England may also clawback a proportion of any settlement and this will be agreed following the outcome of the case. The wider financial implications of this project are set out in the Business Plan appended to this report. Due to the lack of security and therefore availability of institutional funding, the only deemed viable options for funding the completion of the works programme prior to any receipt from the legal proceedings is via a Council loan or a HE grant. GRE5 have explored options for an extension or further grant from HE, however it is unwilling to commit to any further grant, without GRE5 demonstrating it has in place additional financing to progress the development works. Some costs may be capable of recovery from leaseholders, however this has been complicated by the introduction of the Building Safety Act 2022.

### *Legal claim*

Legal proceedings are underway against the builder's warranty provider and mediation is expected to take place in Summer 2023. Counsel has advised that the court case is unlikely to be scheduled until Summer 2024 at the earliest.

Legal proceedings have been delayed due to the identification of the additional structural defects which have impacted upon the design of a final solution and costs estimates. Information has now been provided to the insurer and all documentation is currently being reviewed. Further details in relation to the legal claim are provided in the Confidential Appendix 1 to this report.

## **3. Implications of the Recommendation**

### **3.1 Financial implications**

The cost and cash flow planning for this project is complex due to a number of factors including uncertainties in relation to potential Homes England clawback, the outcome of the legal claim, total final costs and the potential recoverability of some monies from leaseholders.

The maximum cost exposure to the Council would be £15.0m (with the loan extension to £15m from £10m). This is based upon £nil receipt from the legal claim and Homes England funding the additional structural works required on Nova House. If the HE grant is not forthcoming, a further report will be presented to Cabinet with options in relation to further funding requirements.

The Council's financial exposure may be reduced by some or all of the following:

- **Recovery from leaseholders** - Although a tribunal determined that leaseholders, and not the freeholder, are liable for waking watch costs, this has been superseded by the Building Safety Act 2022 which limits compensation payable by qualifying Leaseholders to £10k each. GRE5 is currently seeking advice as to the interpretation of the new Building Safety Act 2022 and its implications for recovering monies from leaseholders. This new Act has not yet been tested through the courts. An assessment of the number of qualifying and non-qualifying leaseholders in Nova House will be required and the amounts that could be recharged to each group considered as part of a recovery strategy. Assuming all leaseholders are qualifying (although this is unlikely to be the case) and therefore their liability is capped at £10k each, would results in a maximum potential recovery of £0.7m. This would reduce the Council's cost exposure further.
- **Receipt of insurance claim proceeds** – the quantum and timing of any insurance claim receipt is unknown and will depend on the legal route taken (mediation v court). The uncertainty makes it difficult to quantify the impact on the Council's cost exposure. A process chart of possible outcomes is included as Appendix 2 in Part B to this report. The financial impact of different outcomes is considered in the Business Plan included in Appendix 1.
- **Homes England clawback** – as set out in the Grant Funding Agreement, Homes England requires GRE5 to take reasonable legal action against insurers/third parties and it *may* recover monies from the proceeds of any settlement which are specifically related to costs that it has funded. This is unknown at this stage and could range between £nil and £9.2m (the total current GFA amount). If any further grant is awarded, it is likely to be subject to similar clawback provisions.
- **Scope and/or cost variations** – whilst additional works have been fully costed, contracts have not yet been agreed and costs may increase. In addition, the scope of works continue to be subject to negotiation and third party advice on reasonableness as highlighted in this report.

Several recovery scenarios have been considered – they are included in the GRE5 Business plan and Appendix 3 and 4 of the Confidential report.

### 3.2 Legal implications

GRE5 is responsible for regulatory compliance of the Nova House site and has worked closely with key stakeholders: RBFRS, SBC Building Control and Housing Regulation. The introduction of the Building Safety Act 2022 has significantly changed the rights, powers and protections for residents of high-rise buildings. The purpose behind the legislation is to provide leaseholders with protection from the costs associated with non-cladding defects, including interim measures like waking watches. Residents also have rights to report concerns to the Building Safety Regulator. Not all elements of the Act are in force and the Government is consulting on secondary legislation at present. This includes the provision of statutory guidance on reasonable steps required to be taken by landlords to ensure that all reasonable avenues of cost recovery have been explored before passing remediation costs on to leaseholders. Pending clarification of these matters, GRE5 and the Council must make reasonable decisions, based on the best evidence available and on advice from relevant professionals.

The Council owes a fiduciary duty to its taxpayers, as well as a best value duty to make arrangements to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. As stated in the report to Cabinet in June 2021, some of the works required to cover building defects are not covered by a Homes England grant, although there has been an indication that grants will be extended to cover a wider range of works. Any works undertaken by GRE5 to the building are likely to increase the value of the leases, but unlikely to substantially increase the value of the freehold interest. Therefore the Council needs to consider the recoverability of any loans, rather than assume that the value of its shareholding will increase.

The Council has put in place governance arrangements to manage any conflict of interest between the GRE5 board of directors and the Council as shareholder. The Council's Executive Director of Housing, Planning and Property is the Council's shareholder representative and there are separate appointments of individuals to be board of directors, based on these individuals' skills.

The Council has powers of investment under s.12 of the Local Government Act 2003, which permit it to invest for any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs. In deciding whether to invest, the Council must take account of Government guidance. Investments are split into investments held for treasury management purposes and other investments. Investments for treasury management purposes must comply with the requirement to prioritise security, liquidity and yield. A proposed loan to GRE5 is unlikely to come within these requirements.

Other investments should be presented in a way that discloses the contribution it makes towards service delivery objectives and/or place making role of the local authority. The Council's Treasury Management Strategy makes reference to loans being provided to council owned companies, including GRE5.

The Local Government Act 1988, section 24 provides a power to provide financial assistance for privately let housing accommodation. Subject to s.25 a local housing authority shall have the power to provide any person with financial assistance for the purpose of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management of any property which is or is intended to be privately let as housing accommodation. The financial assistance can include a grant, loan, guarantee, indemnity or the acquisition of shares or loan capital. Privately let includes accommodation occupied in pursuance of a lease or licence or statutory tenancy where the immediate landlord of the occupier is not a local authority. Section 25 requires consent to be obtained from the Secretary of State. A number of general consents have been issued which include General Consent C permitting financial assistance to be provide to private landlords for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management, whether by that person or another, of any property which is intended to be privately let as housing accommodation. This consent is intended to be a wide general consent. This is the most suitable power to rely on to extend the loan to GRE5. The Council acquired the shares of GRE5 with a view to improving the safety of the building for its residents, as opposed to for an investment purpose. This is the only known high rise residential building in Slough that has failed flammability tests in relation to ACM cladding and providing funding for the specific purpose of addressing the building defects is not likely to create an expectation that other building owners will be able to secure loan or grant funding from the Council.

### 3.3 *Risk management implications*

GRE5 maintains a risk management plan which is considered as part of the overall review of GRE5 and the project Action Plan. The key risks included on the plan, and additional Council specific risks, are set out below:

- *Increased costs* – As the project has progressed, several additional defects have been identified which have resulted in delays and the additional costs outlined under the Financial Implications section of this report. Costs continue to be monitored and managed and may increase further. All structural works have now been fully costed by independent third parties.
- *Further unknown defects* – There is an ongoing risk that further defects may be identified during remediation works, although this risk is reduced due to the nature of existing survey work completed.
- *Programme delays* – delays to the programme have been experienced due to the COVID 19 pandemic and additional structural defects found. The delays have contributed to the cost increase due to inflationary impacts and the ongoing costs associated with keeping the site safe and secure, including monthly waking watch costs.
- *Legal claim* – The actual amount recoverable remains unknown until either mediation or, if that is unsuccessful in terms of agreeing quantum, the court case. Until this, and the claw back position with Homes England, is known, the final position in cost exposure for the Council remains uncertain.
- *Leaseholder recovery* – The amount that will be sought from Leaseholders to meet any shortfall in with the insurance claim remains uncertain and is subject to the provisions of the Building Safety Act 2022. The Building Safety Act limits cost recovery from qualifying leaseholders to £10k. Current work is ongoing to identify how many leaseholders in Nova House are qualifying and non-qualifying.
- *Delay to Home England grant funding* – The main GFA has been signed and six payments have been made under the Agreement to date. Claims are put in monthly, but any delay to claims being paid will impact the peak loan requirement from the Council.
- *Reputational impact* – the Council reputation may be impacted negatively if the project continues to be delayed or if there is a breach of any of its statutory requirements.

### 3.4 *Environmental implications*

There are no identified environmental implications associated with the project at this time. The project is not setting out to enhance the environmental performance of the building although it will have regard to matters of sustainability in product selection.

### 3.5 *Equality implications*

There are no identified needs for an EIA at this juncture.

### 3.6 *Procurement implications*

There are no procurement implications at this point of the project.

### **3.7     *Workforce implications***

There are no workforce implications, although it is recognised that additional Council resource may be required to provide oversight of this project. The resources are provided to GRE5 at cost under its SLA with the Council. There is GRE5 specific resource in place to manage the project, the legal claim and provide corporate oversight and governance.

### **3.8     *Property implications***

The property implications are covered in the main body of this report.

## **4. Background Papers**

None attached.

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**Ground Rent Estates 5 Limited**

**Strategic Business Plan**

**April 2023 to March 2028**

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***6<sup>th</sup> February 2023***

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## 1. Introduction

Ground Rent Estates 5 Limited (“GRE5”) is a company which is 100% owned by Slough Borough Council (the Council). GRE5 owns the freehold lease of Nova House, a block of 68 apartments in Slough town centre. The building was previously office accommodation and was converted to an apartment block in 2015 with additional floors added to the building.

Nova House failed flammability tests in 2017 following the fire at Grenfell Tower. Further survey work then revealed significant defects with the compartmentation within the building and additional structural defects were identified in late 2022.

GRE5’s core activities are the collection of ground rent, freehold extensions and management of some services at Nova House. Its income and costs are approximately £15k per annum and it has very limited options in terms of raising finance as it has minimal assets and value.

In 2018, the Council approved the acquisition of 100% of the share capital of GRE5 for £1 due to concerns about the capacity and ability of the company, and its existing shareholders, to undertake the substantial remediation works required and concerns about the safety of residents.

Whilst the scope of works was unknown at that stage, costs were anticipated to be less than £10m and it was assumed that any costs would be recoverable following a legal claim.

Interim fire safety measures were put in place, and continue to be in place, in the building to ensure the safety of residents, pending the completion of remediation works. These have included a high-quality heat detector system, the presence of a 24-hour waking watch and immediate evacuation procedures in the event of fire. All measures continue to be assessed on an ongoing basis in conjunction with the Royal Berkshire Fire and Rescue Service (RBFRS).

A scope of works and Development Agreement were agreed with Slough Urban Renewal (“SUR”) in 2021 and all Aluminium Composite Material (ACM) Cladding was removed by the end of January 2022. However, the project has been delayed due to covid restrictions and additional tests and surveys that were completed in FY20/21 and again in FY 22/23, which identified a range of defects and technical issues.

Following the removal of the cladding, several structural issues were identified relating to the Spine Beam, bracing to the building, shims and column connections. This resulted in the halt of the cladding replacement whilst SUR and its building contractor, Morgan Sindall, made assessments and provided remediation options for the structural issues. The structural issues will need to be remediated before the cladding and balconies can be replaced.

The main phase of works is now expected to be undertaken during 2023 and 2024 with completion of the project forecast for Q3 FY24/25.

In FY21/22, the Council introduced a range of changes to strengthen governance, management, oversight, decision making and reporting. This included the recruitment of new GRE5 directors, new shareholder function arrangements, a new Senior Responsible Officer (SRO), a Council project manager and improved risk and financial reporting arrangements.

This Business Plan sets out the key strategic, operational and financial matters for GRE5 and is for a 5-year period from April 2023 to March 2028.

## 2. Strategic Aim and Objectives

### 2.1 Strategic Aim

The strategic aim of GRE5 is to ensure that Nova House meets all fire and safety requirements and that tenants can safely live in the property without the need for ongoing interim measures to address the fire and structural risks. As the freeholder of Nova House, GRE5 also strives to provide an excellent service to tenants and leaseholders.

### 2.2 Strategic Objectives

The strategic objectives of GRE5, all of which support its strategic aim, are as follows:

- **Tenant safety** – always act to maximise tenant safety and minimise disruption to their living conditions;
- **Building condition** - ensure that Nova House meets all the requirements of the Fire Risk Assessment and the Building Safety Act;
- **Service to tenants and leaseholders** - ensure the management of the building takes place in an efficient and effective manner and any issues are communicated appropriately;
- **Stakeholder management** - communicate with our stakeholders and keep them informed throughout each step of the remediation works of Nova House in a timely manner;
- **Shareholder interest** – protect the interest of the Council, as shareholder, and seek to maximise cost recovery through the legal process;
- **Exit strategy** – develop an exit strategy in conjunction with the Council, which obtains maximum value for the freehold interest in GRE5, following completion of the works to Nova House.

### 3. Key Activities

GRE5 continues to consider its options in relation to future activity on a regular basis, especially in light of the additional structural issues, associated increase in costs and cashflow requirements due to the revised dates associated with the legal claim. Three key options are available to the company.

#### *Option 1 – Cease all works now*

The revised works programme has now been fully costed based upon the structural defects. All activity could be stopped now and continued following the outcome of the legal claim however GRE5 will be required to undertake these works irrespective of the legal outcome. The timescales and monetary amounts associated with the legal claim remain uncertain at this stage however Counsel has advised that the court case is now likely to Summer 2024 at the earliest due to court schedules. Mediation may take place before Summer 2023 however this is dependent upon Allianz, the warranty provider, electing to engage in mediation proceedings.

This option has been discounted for several reasons. Nova House would remain covered in the existing temporary membrane and scaffolding which is intended to be a short-term measure. Safety and fire issues associated with the building cannot be remediated, including cladding replacement, until the structural issues are addressed. Stopping the works programme would still result in ongoing costs associated with ongoing waking watch costs, additional legal costs due to potential leaseholder compensation claims, scaffolding costs, project management time etc. There is a risk of enforcement action and additional measures being required by RBFRS. The current membrane on the building is temporary and RBFRS may therefore require steps to be taken to ensure the safety of residents if any further delay in works occurs.

Nova House is classified as a Relevant Building under the Building Safety Act 2022 as it is over 11 metres tall and has six storeys. The Building Safety Act sets out a number of statutory remedies that require building owners to undertake and pay for remediation works for defects in Relevant Buildings. The Act also stipulates the requirement of works arising from the potential spread of fire or structural failure to be remedied in occupied buildings.

In addition, Homes England funding drawn down to date may be at risk of clawback as the project outcomes will not have been achieved. Securing additional grant funding from Homes England may be unlikely under these circumstances. Leaseholder recovery is a complex issue due to the 2022 Act which is still only partially in force and regulations and statutory guidance is awaited. Legal advice is being taken with regards to its application to Nova House and the mix of qualifying and non-qualifying leaseholders. Leaseholder recovery is capped under the 2022 Act for qualifying leaseholders (£10k).

*Headlines: no additional Council funding required, no ability to secure additional funding from Homes England, potential delay by at least 18 months pending court case outcome, building with temporary membrane in place and residents living in current conditions for an extended period.*

#### *Option 2 – Demolish the existing building and either rebuild equivalent or sell the site as a development site*

Due to the additional structural issues and associated costs, demolition has been considered with either 1) rebuilding equivalent accommodation or 2) selling the site for development. However, under this option there would be an obligation for GRE5 to buy out the leaseholders, which would be at significant cost to GRE5, estimated at at least £19m. Leaseholders would be required to agree

that the building was incapable of economic repair and a CPO process could be prolonged and costly, as well as significantly disruptive to the current residents and leaseholders. This would also be a significant undertaking requiring additional resources and significant additional Council resources.

This is a high-risk approach. The value of any works to date (£15.8m as reflected in the table below) would be abortive if the building were to be demolished. The funding received from Homes England may also be clawed back (total £9.2m grant). There may also be further costs in relation to the contracts currently in place with key contractors.

Demolition costs are expected to be c £1m and rebuild costs at least £25m based upon BICS rates with a uplift to reflect current market conditions. The project would also require additional project management and additional internal GRE5 resource.

With significant additional costs associated with a demolition and rebuild, this is not a cost-effective option. The overall cost exposure to the Council under this option will be significantly more than under Option 3 and GRE5 would require additional cashflow support (loan facility) from the Council.

*Headlines: Abortive costs £15.8m (not recoverable from insurance claim), demo and rebuild £26m, additional project mgt costs, insurance settlement capped at rebuild (no demo), potential grant clawback from Homes England, costs/time to agree to acquire from leaseholders, requirement to buy-out leaseholders (value unknown but estimated at £19m plus).*

#### *Option 3 – Proceed with updated works programme*

Under this option, works on Nova House would continue in line with the current programme timetable and in advance of the settlement of the legal claim (at the earliest of summer 2024 if this case goes to court or a possibility of summer 2023 if this can be settled via mediation).

The work programme and cash flow requirements would continue to be reviewed and key milestones would be incorporated into the work programme to monitor progress, costs, variations and risks. e.g. key milestones would include at the end of the structural works contract/before commencement of the Development Contract for the main cladding works, at the medication date (if this route is taken) and upon draw down of the new loan facility (which is expected to be in June 2023). The Council's shareholder function would continue to receive monthly progress reports including consideration of key issues, variations to the works programme, funding review, cost review and loan facility drawdown requirements.

The Cabinet Committee now has responsibility for oversight of the Council's companies and decisions that are reserved to Cabinet, will be reported to full Cabinet. Directors are keen to attend member meetings to share information on decision-making, risks and scenario testing.

Total overall costs are now expected to be in the £28.4m compared to the estimate of £19.6m at the end of March 2022. Costs to date (up to the end of March 2023) are estimated to be £15.8m which includes the removal of all cladding, new protective temporary membrane, a range of essential fire and safety measures (including waking watch services and fire doors) and legal, financial and project management costs. The cost changes are set out in the following table.

£m	Previous total cost estimate (March 22)	Current total cost estimate (as at March 2023)	Costs to date As at March 2023
1. Ongoing general costs - legal, waking watch, project management costs etc.	5.5	6.0	4.7
2. Development Contract – fire and safety works	10.6	17.0	10.0
3. Development Contract – additional structural works	-	4.0	0.4
4. External works - other	0.3	0.8	0.7
5. Internal works	3.3	0.6	-
	<b>19.6</b>	<b>28.4</b>	<b>15.8</b>

The fire and safety works contract (cost item 2) has increased by £6.4m due to:

- additional costs on the balcony structures. When the balconies were removed, it was discovered that additional work would be required to reinstate them including secondary steel structures;
- the discovery of additional structural issues with the building, which need to be addressed before the cladding can be replaced;
- the delay in the programme, which has resulted in extra costs due to additional preliminary costs, additional scaffolding costs, the cost of keeping the site safe and secure and inflationary impacts; and
- changes in working practices required due to the structural deficiencies in the building. Based on structural engineer's advice, the building is unable to support the scaffolding and hoists on which the original workplan was based. The new workplan requires additional specialist lifting equipment and has had an impact on work sequencing.

The scope of works and costs as part of the Development Contract have been independently reviewed by Artelia in their role as Employer's Agent and the Independent Certifier and Cushman & Wakefield on behalf of Homes England as part of the grant funding claim process. Assurances have been obtained in relation to the revised specification and costs.

The new scope of works have been assessed as being critical to the completion of the works programme. The cladding cannot be replaced until the structural issues have been resolved as the structure is not sufficiently robust to support the new cladding. Advice has been provided by Arup and Morgan Sindall, based on the extensive surveys and work carried out to date, and verified by the Consultant Engineer working on the insurance claim.

The financial and funding implications of this are set out in more detail in Section 6 of this Business Plan.

Upon completion of the works, the Council will seek to exit from the ownership of Nova House, either through a sale of its shareholding in GRE5 or through selling its freehold interest in Nova House.

### *Conclusion*

Option 3 is the least cost option compared to Option 2 and would require a lower level of loan facility to be provided by the Council. The short term financial risk associated with Option 1 is much lower than the other options as no additional loan facility is provided. However GRE5 would be required to complete the works after a potentially considerable delay, or face legal action. Under Option 2, costs to date of £15.8m would be lost, and leaseholders would need to be bought out of their properties prior to demolition which could cost at least £19m and could take a considerable amount of time.

Option 3 has the lowest financial risk, to the Council compared to Option 2 and will enable the works to Nova House to be completed in the quickest timescale and with the least disruption to occupiers. The cost of delay to the project is set out in section 3.1 below.

The costs for Option 3 have already been fully costed and based upon considerable structural investigations. The costs associated with Option 2 are highly uncertain and are likely to increase given economic conditions and inflationary pressures.

### 3.1 Costs of Delay

The works at Nova House are currently on hold pending the approval of the additional loan facility by the Council. The cladding cannot be replaced until the structural defects are addressed and additional funding is required to enable this work to progress in advance of any insurance receipt.

Any further delay to the programme will have several impacts, including:

- **Timing of additional Homes England funding** – Homes England are unlikely to agree to any further grant funding without Council approval of the additional loan facility. It is anticipated that additional Homes England funding will be approved should the Council approve the loan facility.
- **Additional costs** – any delay results in increasing costs for the project. The additional works relating to the structural deficits were confirmed at the end of 2022 and the current timing represents the earliest opportunity to report to the Council on the potential funding impact. The cost impact of an additional month's delay is set out in more detail below.
- **Impact on occupiers/leaseholders** – the GRE5 directors have worked hard to build the trust of occupiers/leaseholders through the works period. A further delay would extend the need for the temporary membrane on the building and this may have an impact on the relationship between GRE5 and the occupiers/leaseholders. The GRE5 Directors will need to manage this if a delay is incurred.

### Cost impact

The cost impact of a delay in Nova House is set out below (per month):

Cost category	Description	Cost pcm £'000s
Waking watch costs	Costs of providing 24 hour waking watch at Nova House.	25
Advisor costs	Monthly costs of professional support, eg Employer's Agent, Independent Certifier, Clerk of Works, Fire Safety Advice,	22
Time extension costs under the current Development Contract	Extension of time costs are recoverable under the development contract. These include additional insurance costs, project management costs and inflationary impacts.	80
Contractor preliminary costs	Contractor staff costs, site security and hire of onsite accommodation.	16
Subcontractor preliminary costs	Subcontractor staff costs, site security and hire of onsite accommodation.	5
Scaffolding costs	Hire and maintenance costs of scaffolding.	5
GRE5 Director costs	Additional month of GRE5 director costs.	20
Council costs	The delay to the programme will also extend the time until the Council can exit from GRE5. This will result in additional Council resource being needed to support the company, including financial and general company support.	17
		<b>190</b>

### 3.2 Key Activities Based on Selected Option

A summary of the key activities and milestones are included in the table below:

Activity	Description/Target Outcome	Target Completion Date
<b>Cladding panel replacement work</b>	The completion of all replacement cladding works and the replacement of the balconies to Nova House. This will include new secondary steels to support the replacement of the balconies to the building. It will also include the cladding of the external fire escape stair as a fire protection measure due to the lack of adequate fire glazing in adjacent flats.	ACM cladding removed in January 2022. Completion of reinstallation - October 2024
<b>Structural/Stability Remedial Works</b>	The remediation of four main stability defects: <ul style="list-style-type: none"><li>• Internals lateral bracing – This needs to be fitted to the internal core prior to other works being carried out.</li><li>• Spine Beam – The undersized beam at 4th floor level requires propping to the two floors below, this will follow the lateral bracing works.</li></ul>	September 2023

Activity	Description/Target Outcome	Target Completion Date
	<ul style="list-style-type: none"> <li>Shims – There is a lack of connection between the level four slab, this needs remediating as part of the stabilisation works.</li> <li>Splice defects – There are numerous locations where the steel connection/splice details do not meet either building regulations or safety testing on the welds. These need to be remediated prior to the replacement cladding being installed.</li> </ul> <p>In addition to the above stability defects, there are several smaller structural defects that have been identified as part of the survey and investigation works. These include:</p> <ul style="list-style-type: none"> <li>Timber packers being used where they breach a fire compartment.</li> <li>Loose bolts at connections.</li> <li>Poor welded joints.</li> <li>Defects in the partitions.</li> </ul> <p>Satisfactory mitigation measures are in place.</p>	
<b>Steelwork fire protection/sprinkler</b>	<p>Areas of the exposed steel frame have been found to be deficient in fire protection. The effect on the steels in the event of a fire is to be mitigated by the installation of a sprinkler system. The mitigation works will need to be implemented to the satisfaction of the fire officer.</p> <p>Satisfactory mitigation measures are in place.</p>	December 2023
<b>Internal works</b>	<p>Works to the main staircase compartmentation defects have been carried out, along with the replacement of flat entrance doors to meet fire protection standards. Further works include compartmentation defects within the communal areas (main escape routes) and installation of the sprinkler system.</p> <p>Further defects have been identified within the flats themselves. Remediation of these defects would be extremely disruptive to residents, and potentially not fully extensive due to access constraints. Therefore, it is proposed that these are also mitigated by the introduction of the sprinkler.</p>	December 2023
<b>Building management</b>	There will be ongoing leaseholder and tenant liaison through regular leaseholder and tenant meetings.	Ongoing
<b>Funding</b>	<p>To date GRE5 has secured a £9.2m grant from Homes England to fund eligible cladding works and a £10m loan from the Council to support the cashflow of the works and ineligible costs. An insurance claim has been submitted and other sources of funding are being investigated in order to allow the identified structural works to be undertaken.</p> <p>Additional Homes England funding is being sought for the structural works (c. £4.0m), as well as additional loan funding (£5.0m) from the Council to allow works to proceed prior to any receipt from the legal proceedings with the insurer and resolution of discussions with Homes England.</p>	March 2023



Activity	Description/Target Outcome	Target Completion Date
	Legal advice is being sought as to the position regarding recovery of costs from leaseholders following the introduction of the Building Safety Act 2022.	
<b>Business As Usual Position</b>	All cladding and remediation works completed and a return to the business as usual position of solely providing building management services to Nova House.	October 2024
<b>Exit</b>	<p>Identify the most appropriate exit strategy for the shareholder. All the works will need to be completed and the management will need to be up to date and liabilities settled. Cladding certification will be required and remediation works completed to a standard to provide confidence in the building. A robust and satisfactory fire risk assessment following the works will be necessary.</p> <p>May include sale of GRE5 Ltd and/or sale of freehold lease. Leaseholders to be consulted in line with statutory requirements.</p>	<p>Options and solution identified – FY 23/24</p> <p>Implemented in FY25/26</p>

## 4. Governance

The governance structures in place for GRE5 are as follows:

- **Director and Shareholder representative meetings** – Director and Shareholder representative meetings occur monthly due to the level of risk in the project. This forum allows the company to keep its shareholder up to date on key actions, risks and the financial position of the project. It also enables the Council to make swift decisions within its delegated authority;
- **Board of Directors** – the Board of GRE5 meets on a monthly basis to review the progress of the project, the current financial position and key risks and issues;
- **Progress meetings** – the project team meets on a weekly basis to review progress and agree key activities for the week;
- **Service Level Agreement** – the company has a Service Level Agreement with the Council for the provision of company secretarial and financial support; and
- **Council reporting and oversight** – regular reporting to Cabinet Committee and at least annual reports to Cabinet to approve annual business plan.

### 4.1 Board of Directors

The Board of Directors is required to:

- manage the day-to-day business activities and finances of GRE5 in accordance with the Companies Act and the Articles of Association;
- act in the best interest of the company and promote the success of the business;
- undertake legal responsibilities including preparing annual accounts, tax returns and company records;
- provide confidence to RBFRS that works will be carried in an appropriate and timely manner;
- carry out all urgent mitigating works as required as quickly as possible and with minimum disruption to residents;
- monitor progress and review the SUR/Morgan Sindall contract for the cladding removal and replacement and additional structural works;
- ensure proper management of the building;
- monitor and review the progress with the Insurance claim with Allianz;
- recover costs from insurers, leaseholders, and other parties as appropriate;
- obtain grants where possible including from Homes England;
- update the Business Plan and report to shareholders;
- ensure value for money is a key part of any assessment in relation to the works;
- review monthly income and expenditure and manage the financial position of the company;

- work with the shareholders on internal and external audits;
- review and understand the organisations risk profile and regularly review the risks and risk appetite; and
- undertake a skills audit and review ongoing training requirements.

The company has two Directors; Neil Simon and Martin Johnson (appointed in November 2021).

#### 4.2 Council as Shareholder

GRE5 is a separate, distinct legal entity from the Council. However, the Council retains a degree of control through the ownership of all shares in the company. These shares, along with the reporting and governance structures in place give the Council the necessary means to exercise appropriate levels of control. As sole shareholder, the Council has the ultimate sanction of either removing the Board Members and appointing replacements or, ultimately resolving to wind up the company.

The relationship with the Council is primarily governed by the following:

- **the Articles of Association and Shareholder Agreement** setting out reserved functions – the Articles of Association and Shareholder Agreement set out the rights and obligations of the Council as shareholder. These collectively set out the reserved matters where GRE5 needs to have the approval of the Council to undertake certain actions. The existing Shareholder Agreement has been updated and will be approved by Cabinet Q1 FY 23/24.
- **the Loan Agreement** - a loan agreement was put in place in August 2022 for a loan of £10m from the Council to GRE5 to allow the required works to progress.
- **the Service level Agreement** – the Service Level Agreement sets out the services provided to GRE5 by the Council in order to provide transparency in relation to the use of the Council’s staff and facilities in support of the company.
- **Director contracts** – each Director has a contract which clearly sets the responsibilities of a Director, including their relationship with the Council.

## 5 Key Business Risks

A detailed risk register for GRE5 is maintained and updated monthly by the Board of Directors and the Project Team. At each risk register review meeting the impact and probability of each risk are scored and the mitigations reviewed and assessed. A summary of the key risks and mitigations from the Highlight Report presented at each Board meeting is as follows:

Risk Title	Description	Risk Category	Mitigation
<b>Additional variations making the project cost inefficient</b>	Costs have increased significantly since the start of the project due to the additional structural works required and delays to the project. There remains a risk that costs could increase further.	Very High	Monitor the project carefully and continue to update the project cashflow monthly. Work with the Council, contractors and all parties to mitigate cost, risk and spend on all areas.
<b>Further defects and associated costs</b>	Further design, delays and remedial costs are added to the project.	Very High	Measure design and costs against requirement for remedial to take place by ongoing support from the design team. Carry out stringent tipping point/cost exercises.
<b>Building is not safe – concerns for the safety of residents</b>	Additional structural issues have been identified with the building which need to be remedied before the cladding can be replaced.	Very High	The structural safety of the building has been reviewed by ARUP and there is no immediate risk to residents. The situation is being monitored in order that any change to this status will be quickly identified.
<b>Unable to repay loan</b>	GRE5's ability to repay the loan to the Council is dependent on many factors including cost management, further structural issues, outcome of legal claim, potential GFA clawback and leaseholder recovery of costs.	Very high	Regular detailed financial reporting and cash flow planning Robust management of legal claim including engagement with GRE5's legal advisors and range of technical advisors Maintain a strong working relationship with Homes England including transparent and regular dialogue re the legal claim, additional structural costs and clawback mechanisms.
<b>Leaseholders non-compliant with regards to repayment</b>	Non repayment from leaseholders will impact the overall cashflow position of the company and may result in an inability of GRE5 to repay its loan.	High	Legal advice on the impact of the new Safety Bill, given new cost liability measures for leaseholders. Ongoing engagement with leaseholders including early discussion re the implications of the Safety Bill following legal advice. Creation of communication plan with clear wording.

Risk Title	Description	Risk Category	Mitigation
Legal claim is not successful, lower than anticipated or delayed even further	The legal claim is ongoing, with a Case Management Conference scheduled for March which will confirm the date for court proceedings. There is therefore still a risk that the claim is not successful, delayed or lower than expected.	Medium	Although timing remains uncertain, Allianz's legal team have accepted responsibility for the cladding element of the claim and have made a small (£0.2m) payment towards GRE5's legal costs. Timing and final quantum of the final claim amount are unknown at the present time though and will impact the final cost exposure of GRE5 and the Council, as sole shareholder.
No further funding obtained from Homes England	No further funding is secured from Homes England for the additional structural works. This will result in a funding gap for the Project.	High	Discussions with Homes England to date have been positive, and a variation proposal is being drafted for submission in Q4 22/23. Maintain regular engagement with Homes England.

## 6. Financial Projections

### 6.1 Income and Expenditure Account

There are currently two principal sources of income from Nova House:

- the annual service charge and reserve funds – to cover the management of the building; and
- the ground rent.

These charges are payable by the leaseholders to GRE5. Invoices for the service and reserve charges are issued by the managing agent (Red Rock Management) and collection of outstanding charges is handled by JB Leitch solicitors. The income from the service and reserve charges are held by Red Rock in trust accounts and used for the provision/maintenance of communal services for Nova House e.g. concierge, minor repairs, cleaning etc.

Invoices for the ground rent had been issued by the previous parent company of GRE5 and collection of unpaid ground rent again handled by JB Leitch. The ground rent is collected twice a year – 1st January and 1st July – with invoices normally sent out in May and November. Redrock has been appointed to collect the ground rent. Annual income and operating costs are c£15k per annum.

### 6.2 Cashflow

A forecast cashflow for the works has been prepared and this is updated monthly for discussion at both the Board and Shareholder meetings. It is also used as a planning tool, allowing scenarios to be run for different assumptions in terms of changes to costs and funding sources.

The current baseline scenario assuming no income from the insurance claim, leaseholders or other sources within the forecast period is as follows:

£m	Up to FY21/22	FY22/23	FY23/24	FY24/25	Total
<b>Costs</b>					
Ongoing Costs - Legal, Waking Watch etc.	3.5	1.2	0.9	0.4	<b>6.0</b>
Development Contract - Cladding	7.0	3.0	3.6	3.3	<b>17.0</b>
Development Contract - Additional Structural Works	0.0	0.4	3.5	0.0	<b>4.0</b>
Internal works	0.0	0.0	0.6	0.0	<b>0.7</b>
Other costs	0.5	0.1	0.1	0.0	<b>0.7</b>
<b>Total Costs</b>	<b>11.0</b>	<b>4.8</b>	<b>8.9</b>	<b>3.7</b>	<b>28.4</b>
<b>Funding</b>					
Secured HE grant funding **	-1.7	-5.4	-2.2	0.0	<b>-9.2</b>
SBC loan facility*	-9.2	1.2	-3.1	-3.7	<b>-14.9</b>
HE grant funding for structural works – not yet agreed**	0.0	-0.4	-3.5	0.0	<b>-4.0</b>
Payment from Allianz (Ring fenced for legal costs)	-0.1	-0.2	0.0		<b>-0.2</b>
Leaseholder contribution – not yet agreed***	0.0	0.0	0.0	0.0	<b>0.0</b>
<b>Net position</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.1</b>

\*Note that the Council's loan is required to be paid back by July 2026.

\*\*Note that the Homes Funding may be subject to some clawback. Any clawback would be agreed with Homes England following the outcome of legal proceedings

\*\*\* excluded for financial planning purposes as not yet determined, but a plan will be developed for recovery

## 6.3 Sources of Funding

### 6.3.1 Homes England Grant

During FY 21/22, the Council and GRE5 successfully agreed grant funding of £9.2m from Homes England for eligible development costs. The Grant Funding Agreement (GFA) has been agreed with all parties and has been signed by GRE5 and the main contractor. All Conditions Precedent (CP) have been signed off and grant drawdown requests are being processed on a monthly basis. It is anticipated that the entire £9.2m will be drawn down by December 2023. To date (December 2022) £6.2m has been drawn. Discussions continue to take place with Homes England with regards to changing the scope of eligible costs which may result in further grant funding being made available to GRE5 for the additional structural works. This will reduce the financial risk to the Council.

As noted below, should the insurance claim be successful, there may be a requirement to repay part or all of the Homes England grant. This would be agreed with Homes England following the specific outcome of the case.

### 6.3.2 Insurance Claim against the building's warranty provider

GRE5 is currently engaged in legal proceedings with the building's warranty provider, Allianz. The date of the mediation has not yet been agreed and is subject to receiving some additional project data and the availability of legal Counsel, but current estimates are for mediation proceedings in the first quarter of FY23/24. A Case Management Conference is scheduled for March 2023. At this conference a court date will be set, although Allianz can come forward to mediate at any time up to the court date (expected to be Summer 2024 at the earliest). The Particulars of Claim have been updated to include the increased costs due to the additional structural works and associated delays. Given the sensitivity of the legal proceedings no further information will be included in this Business Plan.

### 6.3.3 Council Loan and Parent Company Guarantee

In July 2021, the Council approved a loan facility to GRE5 of up to £10m to meet its short-term cash flow requirements, pending the:

- outcome of the legal proceedings;
- approval of the grant funding agreement with Homes England;
- completion of works to determine total final costs; and
- recovery of monies from leaseholders.

The £10m loan facility agreement was signed and sealed in August 2022. The loan facility agreement formalises a loan facility that was originally approved by the Cabinet in 2019 but was not approved in accordance with the Council's Investment Strategy. The Council has funded GRE5 costs to date; costs have been included in a separate capital programme cost centre on the Council's balance sheet. These costs will be recharged/passported to GRE5 so that the loan facility is operational.

A variation to the loan agreement will be recommended to Cabinet in March 2023. If approved, this will increase the loan facility to £15.0m. This will require an extension to the current facility rather than a new facility agreement. The loan will require Council approval in line with the Council's delegations.

In FY 21/22, the Council entered into a Parent Company Guarantee (PCG) to enable the works under the Development Agreement to be completed. The majority of the Development Agreement costs are considered to be eligible costs under the terms of the Homes England GFA but there is a shortfall in the region of £1m for the cladding works which would be covered under the terms of the PCG should GRE5 be unable to pay the total costs under the Development Agreement. The shortfall is likely to

increase depending on the final position under the funding variation being discussed with Homes England. It should be noted that the Council is not a party to the GFA or the Development Agreement.

The peak loan facility requirement will be dependent upon the agreed GFA drawdown schedule and any impact on the accrual of interest on the Council loan facility. The outcome of the legal case and timing of any associated financial payments will also impact upon the peak facility requirement.

#### *6.3.4 Leaseholder contribution*

Should the legal claim be unsuccessful, the maximum financial exposure to GRE5, and therefore the Council as 100% shareholder, is projected to be up to £15.0m (£28.4m costs less £9.2m secured Homes England grant and an assumed £4.0m additional grant, and monies received from legal proceedings to date of £0.2m).

Alternative funding strategies are being considered to meet any funding shortfalls, including potential recovery of costs from leaseholders. A tribunal determined that leaseholders, and not the freeholder, were liable for waking watch costs, however the Building Safety Act 2022 has superseded this tribunal decision. This contains detailed provisions as to what costs qualifying and non-qualifying leaseholders are liable for. GRE5 is currently seeking advice as to the interpretation of the Building Safety Act 2022 and its implications on the recovery of any costs from leaseholders. An assessment of the number of qualifying and non-qualifying leaseholders in Nova House will be required and the amounts that could be recharged to each group as part of a recovery strategy.

#### *6.3.5 Other*

Other avenues being explored are the potential, under the Building Safety Act 2022, to progress a claim against the developer of Nova House via their holding/ultimate parent company. Initial investigations suggest that there are significant enough assets held by the company to make this viable. As such an initial application to the courts is being prepared in order to further this. On receipt of a response, an assessment will be made of anticipated legal costs in pursuing this claim against the likelihood of success and value of any claim.

In addition to this there may also be an opportunity to make a claim against the manufacturer of the cladding for the costs in relation to the waking watch (that are not eligible under the grant funding or insurance claims). Following reviews of the Building Safety Act 2022, Fenchurch Law have issued a pre-action letter in relation to the cladding manufacture having a potential liability, in respect to recovering the costs for the waking watch. Fenchurch Law have advised that on receipt of a response they will give an indication as to the likelihood of success and also likely costs of pursuing this further.

Consultation with Homes England will be required on the decisions on both the above points as there is an expectation under the grant funding agreement that all means of recovering the monies from those responsible are fully explored.



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